

§ 293.2

for handling requests under the Freedom of Information Act (FOIA).

(b) To implement 5 U.S.C. 552, and 32 CFR part 285.

[56 FR 26614, June 10, 1991. Redesignated and amended at 56 FR 58179, Nov. 18, 1991; 56 FR 59217, Nov. 25, 1991]

§ 293.2 Applicability.

The provisions of this part apply to all elements of DMA.

§ 293.3 Scope.

This part does not apply to requests from members of Congress, who are governed by DoD Directive 5400.4¹ or from the General Accounting Office, which is governed by DoD Directive 7650.1.²

§ 293.4 Definitions.

(a) *FOIA record.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by DMA in connection with the transaction of public business and in DMA's possession and control at the time of the FOIA request, are considered agency records. For items not considered an agency record, see paragraph 1-402 of DoD 5400.7-R.³

(2) Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (See paragraph 1-402 of DoD 5400.7-R for a complete definition of an agency record.)

(3) If unaltered publications and processed documents, such as regulations, manuals, maps, charts and related geophysical materials, are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply, and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the FEDERAL REGISTER also require no processing under

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the FOIA. In such cases, the requester should be directed to the appropriate source to obtain the record.

(b) *FOIA request.* A FOIA request is a written request for DMA records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from law, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7,⁴ DoD 5400.7-R, or this part.

(c) *Pertinent records.* For the purpose of this part, records shall be considered pertinent if they concern either an individual who is, or foreseeably may become, involved in litigation involving the United States or a matter which is, or foreseeably may become, the subject of litigation involving the United States.

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§ 293.5 Policy.

(a) *Creating a record.* A record must exist and be in the possession and control of DMA at the time of a request to be charged for providing the existing record. (See paragraph 1-506 of DoD 5400.7-R.)

(b) *Public requests.* It is DMA policy to make available to the public the maximum amount of information concerning its operations and activities. Exemptions to this policy are stated in 5 U.S.C. 552 and DoD 5400.7-R. However, exempt records may be released to the public when their disclosure would not be inconsistent with the Privacy Act, DMA Instruction 5400.11,⁵ or any other statutory requirements, and when no legitimate government purpose would be served by withholding them. DoD 5400.7-R provides additional policy guidance regarding the release of DMA records.

(c) *News media requests.* Requests from news media for records that would not be withheld under FOIA shall be released promptly in order to

¹Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

²See footnote 1 to § 293.3

³See footnote 1 to § 293.3

⁴See footnote 1 to § 293.3

⁵Copies may be obtained by written request to the Defense Mapping Agency, Attn: AO (Stop A-2) 8613 Lee Highway, Fairfax, VA 22031-2138